



MIKE PENCE, *Governor*  
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMse12111598

[REDACTED],  
Complainant,

v.

LES BROTHERS RESTAURANT & PANCAKE HOUSE,  
Respondent.

### NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission”), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this case. 910 IAC 1-3-2(b).

On July 9, 2012, [REDACTED] (“Complainant”) filed a Complaint with the Commission against Les Brothers Restaurant & Pancake House (“Respondent”) alleging discrimination on the basis of sex, and specifically, sexual harassment, in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et. seq.*) and [REDACTED]

Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint. An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was subjected to sexual harassment which resulted in the constructive discharge of her employment. In order to prevail, Complainant must show that: (1) she experienced unwelcome sexually offensive comments or actions in the workplace; (2) the comments/actions were sufficiently severe and/or pervasive that it interfered with Complainant’s work performance; (3) she made it known that the behavior/ comments were unwelcome; and (4) Respondent failed to take corrective action to address the hostile work environment.

By way of background, Complainant worked for Respondent as a waitress and alleges she was subjected to sexual harassment on a consistent basis by Respondent’s owner ([REDACTED]) and other male employees. Specifically, Complainant alleges that during the course of her employment with Respondent, its male owner called her “whore” and “puta” (“bitch” in Spanish) and hit her on the buttocks with a wooden spoon as if it were a horsewhip. Although



Complainant alleges she told the owner that the behavior was unwelcome and reported the harassment to the owner's son, [REDACTED], nothing was done. Similarly, Complainant alleges that "[REDACTED]" a male co-worker followed her into a cooler, grabbed her from behind, pressed up against her, and reached under her shirt to grab her breasts. She also alleges that on another occasion, [REDACTED] again followed her into the cooler and while she was turned around, put his hand under her hostess dress and reached for her underwear. Upon turning around, Complainant alleges Joe had his pants down by his ankles with his penis out, and asked her "is it big enough?" At all times relevant to the Complaint, Complainant told the harassing party that the behavior was unwelcome.

While there are no witnesses available to corroborate Complainant's allegations, the testimony of a former employee indicates that Respondent's owner and the same male employees made sexual comments and references to other female employees including the former employee. Although Respondent denies these allegations and asserts if any contact occurred, it was incidental and as a result of employees passing one another in confined spaces, it admits that it does not have an anti-harassment policy. Rather, Respondent states it has instructed and advised its employees relative to job performance and proper conduct toward each other. Moreover, while Respondent alleges that there have been no other complaints about harassment other than those made by Complainant and another individual who filed a Complaint with the Commissioner, Respondent does not maintain personnel records or files for its employees. Further, Respondent admits that it has no evidence supporting its claims that it investigated Complainant's allegations as "the investigation was done face to face by members of the Les family with various employees." In short, Respondent does not have a sexual harassment policy designed to avoid and/or address sexual harassment and there is little to no evidence to show that it actively took corrective action to address Complainant's allegations; as such, there is evidence to believe that Complainant was subjected to a sexually hostile work environment sufficiently severe and/or pervasive that a reasonable person would resign their position. As such, based upon the above mentioned, probable cause exists to believe that an unlawful discriminatory practice occurred in this instance.

Based upon the above findings, probable cause exists to believe that an unlawful discriminatory practice may have occurred. A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5 The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6

November 12, 2013  
Date

Akia Haynes  
Akia A. Haynes, Esq.,  
Deputy Director  
Indiana Civil Rights Commission